

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8616 OF 2007

Smt.Vanabai Sayaji Tambe

and Ors.

...Petitioners

Versus

Shri Sampat Sayaji Tambe

and Ors.

....Respondents

Shriram S.Kulkarni for the petitioners.

Avinash B.Avhad for respondent no.3.

CORAM: S.C.DHARMADHIKARI, J.

10th December, 2007.

P.C. :

1. Heard learned Counsel appearing for parties.
Perused the interim orders.

2. By the impugned order, the lower Appellate court
has vacated that part of the order of the Trial Court

wherein the Trial Court restrained the present petitioner and original defendant no.2 to the suit, from in any manner, creating third party rights, so also, restraining the original defendant no.3 from disturbing the joint possession of the original plaintiffs from the suit land. At the same time the Trial Court refused an injunction, insofar as the house property is concerned.

3. The lower appellate court in the impugned order in the appeal against the trial court's order which was preferred by the original defendant no.3 has held as under ; -

" . Learned Civil judge has gone through revenue record and came to conclusion that revenue record does not show possession of appellant over land bearing Gat No.54 and 57. Therefore, having regard to the relations between respondent nos.1 to 5 learned civil judge, came to conclusion that respondent no.1 and 3 have got right in agricultural land including Gat No.54 and 57. It is pertinent to note that suit has been filed by respondent no.1 to 3. Respondents no.1 to 3 claim that they are in possession of the suit property and, therefore, they are entitled for relief of injunction so far as relief of temporary injunction is concerned possession of the parties is required to be seen. Revenue record shows that 1984 onwards names of respondent no.4 and 5 have been continued.

Names of respondent no.1 to 3 are not appearing in ownership and possession column of 7 x 12 extract. Respondents no.1 to 3 are required to prove that they are in possession of the suit property. Material appearing on record also does not reveal that respondents nos.1 to 3 challenged mutation entry appearing in the names of respondents no.4 and 5 in such circumstances it cannot be said that respondents no.1 to 3 are entitled for relief of injunction restraining appellant from causing obstruction. "

4. Thus, the Trial Court's order has been reversed on the basis that the present petitioners could not prove that they are in possession of Gat No.54 and 57.

5. In this behalf with the assistance of the learned counsel appearing for both sides, I have perused the Trial Court's order. The Trial Court has been clear in observing that the argument of the present respondent was that there was a partition of the suit property/land between defendant nos.1 and 2. The statement is that the partition is of 1972. Reliance was placed upon mutation entry no.3304. It is alleged that the petitioner/original plaintiff did not object to the revenue entries from the year 1984 which evidenced possession of the original defendant nos.1

and 2/present respondent no.1 and 2. Reliance was placed on the agreement, which according to the respondent no.3 demonstrates that there is a partition between defendant nos.1 and 2. This argument was supported by original defendant no.2. The whole suit is at the instance of the first defendant and that is how no relief should be granted. The trial court has observed that the admitted position is that there is no partition. The subject mutation entry does not evidence partition. The extent of the share of the original defendant nos.1 and 2 in the suit land is 50 paise. That is how the entries read. The agreement for sale is dated 22.3.1999 between original defendant nos.1 and 2 and the original defendant no.3 who was the appellant before the trial court. In such circumstances, all that can be said is that there is some mutual arrangement between original defendant nos.1 and 2. However, to such an arrangement the petitioner/original plaintiff is not a party and no prima-facie evidence/material in that behalf is produced. On the other hand, from the documents produced on record it does not appear that the suit lands have been partitioned. Therefore, the alternate

argument was canvassed that the original respondent no.1 is the bonafide purchaser. Even that argument and that there is no question of the petitioner/original plaintiff seeking any preemptive rights was canvassed. In such circumstances, nowhere, has the trial court observed as held by the learned appellate court, even at the prima-facie stage that revenue record does not show the possession of the present petitioners. The entire case is disbelieved by observing that the possession is joint with that of the original Defendant nos.1 and 2. In such circumstances, neither the agreement for sale nor the further document of 20.9.2005 would evidence, that, exclusive possession of the suit lands have been handed over to the original respondent no.3.

6. All these observations even at the prima-facie stage by the Trial Court were based on the documents produced and their contents. The Trial Court was careful enough not to protect the present petitioners, insofar as, the house property is concerned and the Trial Court has also observed that conclusive evidence of partition having not been produced, at this stage,

it would not be fair, just and proper to record a finding in this behalf. On the other hand, the case appears to be of joint possession and such a case needs to be gone into and considered at length after opportunities are given to parties to lead oral and documentary evidence.

7. The lower appellate court therefore was not justified in interfering with this finding of the Trial Court's judge. Having perused the order of the lower appellate court and more particularly the observations in para 9 and 10, it is apparent to me that the lower appellate court has recorded inconsistent and contradictory findings even at the prima-facie stage. While observing as above in para 9, in para-10 and 11 the Learned judge observed that the respondent no.3/original appellant before him is yet to establish, that the partition has taken place and she is a bonafide purchaser of Gat No.54 and 57. She not brought any material to show that original plaintiffs have relinquished their rights in the suit property. Once observing as above, then there was no

justification in holding at this prima-facie stage, that the original plaintiffs/petitioners before me are not in possession. The Learned judge's observations in para 11 also are self-contradictory and clearly inconsistent.

8. In such circumstances, the order of the lower appellate court dated 14.9.2007 in Misc.Appeal no.120 of 2007 cannot be sustained and is accordingly quashed and set aside. The petition is only contested by respondent no.3 and the necessary papers and documents have been perused with his assistance.

9. In the result, the Writ Petition succeeds. The order under challenge is set aside and that of the Trial Court is restored. However, there will be no order as to costs.

10. Needless to state, that all observations made by me are only for the purposes of deciding the application for interim injunction and shall not in any manner influence the Trial court while trying the suit. All contentions on merits of the controversy are

:8:

therefore kept open.

sd/-
